MOTION FILED

JUL 30 1997

Record No. 97-27 (3)

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1996

COMMONWEALTH OF VIRGINIA, *EX REL.*,
SECRETARY OF THE COMMONWEALTH,

Petitioner,

v.

GERALD P. MISERANDINO AND
KAREN L. MISERANDINO,

Respondents.

On Petition For Writ of Certiorari
To The Maryland Court of Appeals

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* AND BRIEF OF THE VIRGINIA CREDITORS BAR ASSOCIATION IN SUPPORT OF THE COMMONWEALTH OF VIRGINIA'S PETITION FOR WRIT OF CERTIORARI

Frank M. Feibelman*
ATTORNEY AT LAW
3018 West Clay Street
Richmond, VA 23230
(804) 358-8479

**Counsel of Record for*
Virginia Creditors Bar
Association, Inc.

Appellate Printing Services • 2 South Sixth Street • Richmond, VA 23219 • (800) 642-7789

17 pp

No. 97-27

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1996

COMMONWEALTH OF VIRGINIA, EX REL,
SECRETARY OF THE COMMONWEALTH,

Petitioner,

v.

GERALD P. MISERANDINO AND
KAREN L. MISERANDINO,

Respondents.

**On Petition For A Writ of Certiorari
To the Maryland Court of Appeals**

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF VIRGINIA CREDITORS BAR ASSOCIATION IN SUPPORT OF THE COMMONWEALTH OF VIRGINIA'S PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice of the Supreme Court of the United States and the Associate Justices of the Supreme Court of

the United States:

Virginia Creditors Bar Association, by and through its counsel, Frank M. Feibelman, hereby moves this Court for leave to file its Brief *Amicus Curiae* in Support of the Commonwealth of Virginia's Petition For Writ of *Certiorari* in the above captioned case and in support of this motion states as follows:

1. Frank M. Feibelman is General Counsel and Treasurer of Virginia Creditors Bar Association and Counsel of Record for the Association.

2. Virginia Creditors Bar Association has requested written consent of both the Petitioners and Respondents to file a Brief *Amicus Curiae* in Support of the Commonwealth of Virginia's Petition For Writ of *Certiorari*. (Copy of letter dated June 20, 1997, attached hereto as Exhibit A.) However, to date consent has been received only by Andrew Polott, Counsel for Resort

Properties, Inc., and the Commonwealth of Virginia (copies attached hereto as Exhibits B and C, respectively). No response has been received from Benjamin Lipsitz, Attorney for respondents.

3. Pursuant to Rule 37.2(b) the Rules of this Court, the Virginia Creditors Bar Association's *Amicus Curiae* Brief is attached hereto and submitted herewith as one document.

4. The Virginia Creditors Bar Association is an independent Bar Association comprised of approximately 130 attorneys and law firms in Virginia, whose practices include creditors rights and the collection of all types of accounts, for all types of creditors from debtors, both within and without the Commonwealth of Virginia, who transact business within the Commonwealth of Virginia. Our interest is in preserving the sanctity of judgments already obtained against out of state

defendants, as well as in maintaining a low cost, efficient method of service of process to obtain jurisdiction over those individuals from other states who choose to transact business in the Commonwealth of Virginia.

WHEREFORE, it is respectfully requested that Virginia Creditors Bar Association's Motion For Leave To File Brief *Amicus Curiae* in Support of the Commonwealth of Virginia's Petition For Writ of *Certiorari* be granted.

Respectfully submitted,

Frank M. Feibelman
Counsel for *Amicus Curiae*
Virginia Creditors Bar Association, Inc.
3018 W. Clay Street
Richmond, VA 23230

July 30, 1997

V C B A
VIRGINIA CREDITORS BAR ASSOCIATION
P.O. Box 12141 • Richmond, Virginia 23241

June 20, 1997



Mr. Lipsitz
100 Church Lane
Baltimore, MD 21208

Andrew W. Polott, Esquire
Poppleton, Garrett & Polott, P.C.
6430 Rockledge Drive, Suite 500
Bethesda, MD 20817

Dear Mr. Lipsitz and Mr. Polott:

Pursuant to Rule 37 of the RULES OF THE UNITED STATES SUPREME COURT, on behalf of the Virginia Creditors Bar Association, I respectfully request your consent to allow the Virginia Creditors Bar Association to file an amicus curiae brief in support of the Petition For Writ Of Certiorari in the Supreme Court.

I would appreciate your advising me in writing at my office address of P. O. Box 6857, Richmond, Virginia 23230-0857, of your decision.

I thank you in advance for your cooperation in this regard.

Very truly yours,

Jill S. Marks, President

JSM:pg

cc: A. Ann Berkebile, Assistant Attorney General
Ernest C. Vaughan, Vice President, VCBA
Robert P. Quadros, Secretary, VCBA

Frank M. Feibelman, Treasurer, VCBA
Frank DeGaetani, Esquire, Director, VCBA
J. Steven Buis, Esquire

Law Offices
POPPLETON, GARRETT & POLOTT, P.C.

6430 ROCKLEDGE DRIVE
SUITE 500
BETHESDA, MARYLAND 20817

(301) 493-9800
TELECOPIER (301) 493-6585
INTERNET: FIRM@PGLAW.com

June 24, 1997

Jill S. Marks, President
Virginia Creditors Bar Association
P.O. Box 12141
Richmond, Virginia 23241

Dear Ms. Marks:

This will confirm the consent of our client, Resort Properties, Inc., to file an amicus curiae brief in support of the Petition for Writ of Certiorari in the Supreme Court by the Commonwealth of Virginia, which Petition we will join.

Please let me know if you need anything further.

Sincerely,

Andrew R. Polott

ARP/jm

cc: A. Ann Berkebile, Assistant Attorney General



COMMONWEALTH OF VIRGINIA

Office of the Attorney General
Richmond, 23219

Richard Cullen
Attorney General

900 East Main Street
Richmond, VA 23219
804-786-2071
804-371-8946 TDD

July 7, 1997

Jill Marks, Esquire
President
Virginia Association of
Collections Attorneys
Samuel, Pustilnik, and Marks
Post Office Box 6857
Richmond, Virginia 23230

Re: Miserandino v. Resort Properties-
Appeal to Supreme Court

Dear Jill:

As we discussed some time ago in our telephone conversation, the Commonwealth of Virginia, Intervenor/Petitioner in the case referred to above, consents to the filing of an amicus brief by the Virginia Association of Collections Attorneys in this case.

If you have any questions regarding the Commonwealth's consent, please do not hesitate to call.

Very truly yours,

A. Ann Berkebile
Assistant Attorney General

cc: Andrew R. Polott
Benjamin Lipsitz

aab\miserandinomarkslet



TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. PURPOSE	1
II. REASONS FOR GRANTING WRIT OF CERTIORARI	2
III. CONCLUSION	5
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Page

Fair Debt Collection Practices
(15 U.S.C. 1692, *et seq.*) 4

No. 97-27

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1996

COMMONWEALTH OF VIRGINIA, EX REL,
SECRETARY OF THE COMMONWEALTH

Petitioner,

v.

GERALD P. MISERANDINO AND
KAREN L. MISERANDINO,

Respondents.

AMICUS CURIAE BRIEF ON BEHALF OF VIRGINIA CREDITORS BAR ASSOCIATION IN SUPPORT OF THE COMMONWEALTH OF VIRGINIA'S PETITION FOR WRIT OF CERTIORARI

I. PURPOSE

The Commonwealth of Virginia has petitioned this Honorable Court for a Writ of Certiorari in this cause for reasons stated more fully in its Petition filed on June 30, 1997. The purpose of this brief is

not to duplicate the efforts of the Commonwealth, but to augment them.

The Virginia Creditors Bar Association is an independent Bar association comprised of over 100 attorneys and law firms engaged in creditors' rights representation throughout the Commonwealth of Virginia. Clients include financial institutions, manufacturers, suppliers and other businesses which grant credit in intrastate and interstate commerce. Full faith and credit enforcement of judgments among states is of particular importance to them, and it is in the interest of our clients and our representation of them that this brief is submitted.

II. REASONS FOR GRANTING WRIT OF CERTIORARI

The Maryland Court of Appeals has, by its decision in this matter, declared the Commonwealth of Virginia's procedural mechanism for service on out of state

defendants unconstitutional for want of due process. The ramifications of this are enormous inasmuch as it calls into question the validity of thousands of judgments taken in Virginia against defendants who reside outside of the Commonwealth but who chose to do business and incur obligations here. Similarly vulnerable are judgments granted by Federal courts where this method of service of process was used. Until this issue is addressed by the United States Supreme Court, judgments thought by Virginia litigants to be inviolate are of dubious enforceability outside the bounds of the Commonwealth.

As long as the constitutionality of this method of service remains undecided at the highest national level, a Virginia attorney taking a judgment in accord with Virginia law against a nonresident faces not only the possibility of the judgment being invalid, but the apprehension of retaliatory

action under the Fair Debt Collection Practices Act (15 U.S.C. 1692, et seq.) or a state counterpart. Similarly, an attorney engaged to domesticate such a judgment outside of Virginia faces the same specter.

Experience indicates to our clients and membership that first class mail is more likely to reach the intended recipient than certified or registered mail. We have found that frequently such mail is returned "unclaimed" or "refused." Good news rarely comes via certified mail. This very point was made to the Virginia legislators when considering the mode of delivery to be required by the Secretary of the Commonwealth after service upon him as statutory agent. The Virginia General Assembly's determination of adequacy should not be subjected to the second-guessing of a Maryland Court.

III. CONCLUSION

To deny this Petition would allow the Maryland Court of Appeals to void Virginia statutes, thus substituting its judgment for the wisdom and decisions of the Virginia legislature and Supreme Court of Virginia in enacting and overseeing the laws of the Commonwealth. The full Faith and Credit clause of the United States Constitution would be rendered a nullity if individual states are allowed to pick and choose which other state's statutes they deem are constitutional. This determination must be made by the final arbitor of constitutionality, the United States Supreme Court.

This Court should grant the Commonwealth of Virginia's Petition for Writ of Certiorari.

Respectfully submitted,

VIRGINIA CREDITORS BAR
ASSOCIATION

Frank M. Feibleman, Esquire
3018 West Clay Street
Richmond, Virginia 23230
804 358-8486

A:\BRIEF